– утім низка вимірювальних індикаторів отримали доволі низькі оцінки, зокрема:

– призначення голови служби по політичним мотивам 0 балів;

– призначення керівників органів і установ виконання покарань без відповідного прозорого конкурсу 1 бал;

– професійне управління органами і установами виконання покарань, починаючи з 2016 року – 0 балів;

– наявність дієвої кадрової бази даних щодо резерву на заміщення посад – 2 бала;

– корупційні ризики, доброчесність персоналу установ виконання покарань – 2 бала;

– ефективність підготовки та перепідготовки персоналу для ДКВС України– 3 бала;

– справедливість і конкурентоспроможність системи оплати праці персоналу органів і установ виконання покарань – 1 бал.

Отже наведені оцінки окремих параметрів функціонування ДКВС України свідчить про необхідність виправлення законодавцем недоліків правового регулювання функціонування ДКВС України.

Насамкінець, на жаль, Україна так і не сформувала власної моделі ДКВС України, а запозичення різних за сутністю ідей виконання покарань із законодавства зарубіжних країн кардинально не змінило стану справ у діяльності ДКВС України.

Література:

1. Про Державну кримінально-виконавчу службу України: Закон України від 23.06.2005 р. № 2713-15. *Відомості Верховної Ради України.* 2005. № 30. Ст. 409.
2. Про схвалення Концепції реформування (розвитку) пенітенціарної системи України: розпорядження Кабінету Міністрів України від 13.09.2017 р. № 654-р. URL: http://zakon2.rada.gov.ua/laws/show/654-2017-%D1%80 (дата звернення: 10.08.2022).

THE IMPACT OF THE PENITENTIARY SUBCULTURE ON THE LIBERALIZATION THE CRIMINAL PENAL SYSTEM OF UKRAINE

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The liberalization of the criminal penal system of Ukraine in recent years has sharply exacerbated the problem of the influence of the penitentiary subculture on it. It would seem that the reforms carried out by the Ministry of Justice of Ukraine in the criminal penal system should have a positive impact on the functioning of the community of convicts.

However, a certain achievement of positive changes in the criminal penal system of Ukraine has not affected the transformation of the penitentiary subculture in a more favorable direction. And first of all, this is the attitude of convicts to the staff of the criminal penal system, as well as the introduction of rules of conduct and a network of stable informal contacts among convicts in places of incarceration in Ukraine.

Our analysis of the impact of the penitentiary subculture on the liberalization of the criminal penal system of Ukraine does not give grounds to assert an optimistic forecast of the criminological situation developing among convicts in places of incarceration. This, in particular, is evidenced by the results of a study of the conflict activity of convicts, their commission of new crimes in places of incarceration, conducted by domestic scientists during the last ten years.

The penitentiary subculture in the criminal penal system of Ukraine is not a random, but rather a natural trend. It was formed in places of incarceration for decades, it was rarely talked about, or simply hushed up.

In fact, the penitentiary subculture has caused and continues to cause great harm to the liberalization of the penitentiary system of Ukraine, and this is due to the fact that it contributes to the development of intergroup hostility among convicts, the formation of a negative attitude of convicts to the staff of the penitentiary system. On its basis, even today, conflicts and violent actions between individual convicts and groups of convicts arise in penitentiary institutions.

It also negatively affects the socio-psychological state and behavior of convicts while serving their sentences in places of incarceration. All of the above confirms the correctness of the scientific hypothesis we have chosen that the penitentiary subculture in places of incarceration in Ukraine negatively affects the liberalization of the criminal penal enforcement system of Ukraine and at the same time shows the need for its solution in the legal field.

The presence of a modern penitentiary subculture in places of incarceration with its specific set of traditions, rules of conduct and a stable informal contacts between convicts and the staff of institutions of the penitentiary system of Ukraine negatively affects the personal safety of both convicts and staff.

Ukrainian scientist O.V. Shkuratenko thinks that the deterioration of the operational situation in the places of the Ministry of Justice of Ukraine is not

due to the liberalization of the criminal penal system, but the presence of a penitentiary subculture and antisocial individuals who support the subculture in places of incarceration. Therefore, the scientist guesses that the penitentiary subculture occupies a special place in the system of serving punishment and its study will make it possible to understand the inner content of criminal behavior of persons who, having committed a crime, were convicted and are serving their sentence [1, p. 138].

The great importance for the liberalization of any criminal penal system has the progressive system of punishment, which is considered by the foreign scientist A.B. Skakov as a complex intersectoral institute of criminal and penal law, which includes several independent institutions, in the process of applying them the legal status of convicts changes depending on the degree of its correction, either in the direction of expansion, or in the side of limiting the scope of his rights [2, p. 5].

It is important that the convict, having first come to places of incarceration, faces problems that affect his personal interests, for example, no one asks him: which colony is he going to, will he sleep there, where is a free place, and as always it is not the best. His mental state is violated and then the convict seeks protection among authorities, begins to play along with the penitentiary subculture.

The Ukrainian scientist K. V. Muravyov suggested that the convicts did not want to listen to the requirements of the administration of penitentiary institutions, due to the stereotypes they have acquired, the traditions of the criminal world [3, p. 156].

Another Ukrainian scientist V. S. Medvedev believes that the criminal subculture is those values, norms, traditions that replace officially recognized, universally accepted behavior regulators and determine the order of functioning of the environment of convicts and their individual representatives [4, pp. 124-125].

The above approaches of scientists to the influence of the penitentiary subculture on the liberalization of the criminal penal system of Ukraine show that in places of incarceration, each convict consciously or intuitively sets a goal to preserve himself, his human self, and therefore he is forced to focus on those ones, who live in conditions of non-freedom and even increase his status if he adheres to traditions and the customs of the penitentiary subculture.

The above allows us to conclude that the penitentiary subculture is weak and remains in a certain shadow, it is not publicly spoken about, it is absent, and in the reports of correctional colonies, both convicts and staff know about it. The scientific works of Ukrainian scientists show that they constantly complain about justice and violations of their rights, and if the administration of the correctional colony does not respond to such complaints, their place is taken by persons from the penitentiary subculture. The leaders of the penitentiary subculture take the role of justice for food,

receiving parcels from relatives and friends, sleeping places, choosing a workplace, etc.

References:

1. Shkuratenko O. V. (2012) Modern interpretations of the concept of criminal subculture. Legal bulletin, 4 (25), 138 [in Ukrainian].
2. Skakov A. B. (2004) Progressive system of execution of deprivation of liberty and its reflection in the new legislation of the Republic of Kazakhstan : Monograph. Almaty. 151 p.
3. Muravyov K. V. (2000) "Prisoner community" as a socio-psychological phenomenon in places of deprivation of liberty. Problems of penitentiary theory and practice, 5, 151–157 [in Ukrainian].
4. Medvedev V. S. (2003) Criminal psychology. Kiev [in Ukrainian].
5. Kolb O. G. (2015) Criminal subculture: concept, public danger, forms and means of influencing the law and order in penitentiary institutions. Kiev [in Ukrainian].

КОНСТИТУЦІЙНІ ПРАВА ТА СВОБОДИ ЛЮДИНИ І ГРОМАДЯНИНА ЯК ФАКТОР ФОРМУВАННЯ ВІТЧИЗНЯНОЇ КРИМІНАЛЬНО-ВИКОНАВЧОЇ СИСТЕМИ

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